



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: James H. Peak

File: B-255522

Date: May 22, 1995

DIGEST

An employee, whose office at his old permanent duty station was closed, transferred to an overseas location and sold his residence at his old duty station. The employee states that he will not be able to return to his old duty station and claims reimbursement for real estate expenses on the basis of a statutory exception in 5 U.S.C. § 5724a(a)(4)(A) (1988), which allows reimbursement of real estate expenses when an employee returns from an overseas assignment to a different location in the United States. He may not be reimbursed since: (1) he was not officially notified prior to his transfer that he would not be returning to his old duty station; (2) there is no regulation that precludes his return; and (3) the agency reports that employee may be assigned to his old duty station upon return from overseas. Robert M. Hooks, 72 Comp. Gen. 130 (1993), distinguished.

DECISION

The Department of the Army, U.S. Army Corps of Engineers, Washington, DC, has forwarded for decision the claim of Mr. James H. Peak to be reimbursed for the expenses incurred in the sale of his residence in Las Cruces, New Mexico.¹ We hold that he may not be reimbursed.

Mr. Peak was employed by the Corps of Engineers at the White Sands Missile Range, New Mexico, as a civil engineer assigned to a ground based laser (GBL) project. In November 1990, Mr. Peak was advised by the Huntsville Division Personnel Office that the project was being terminated and that he could not stay at White Sands since the area office was to be closed by January 21, 1991, and his position abolished. He was asked to state his preference as to a position at a different location. He was advised that he would be reimbursed for real estate expenses since it was anticipated that the transfer would be

¹The claim was submitted by John F. Best, Chief, Finance and Accounting Division, Directorate of Resource Management.

within the United States. Mr. Peak relied on this advice, and entered into a real estate listing agreement on December 4, 1990, to sell his Las Cruces residence.

Mr. Peak was selected for a position in Washington, DC, and he signed a service agreement on November 26, 1990, but travel orders were never issued transferring him to Washington, DC. Instead, he was ordered to report there for temporary duty on January 23, 1991. While in Washington, Mr. Peak was advised of a position with the Corps in Japan. He accepted the position and departed Las Cruces, New Mexico, for Japan on May 7, 1991. His residence in Las Cruces was sold on August 7, 1991.

Mr. Peak's request for reimbursement of real estate sales expenses in the amount of \$7,820.95 was denied by the Corps on the basis of lack of statutory and regulatory authority to reimburse residence sales expenses upon a transfer to an overseas location. Mr. Peak argues that he is entitled to reimbursement because he will not be returning to his old duty station in White Sands since his office there has closed, citing to our decision Robert M. Hooks, B-249184, Mar. 5, 1993 (72 Comp. Gen. 130), as being applicable to his request.

In Hooks, the employee was notified prior to his transfer from Alaska to Singapore that he would not be allowed to return to Alaska and that his return rights would be to his prior position in Savannah, Georgia. These instructions were given by agency officials pursuant to an agency regulation which did not permit a return to Alaska. When his tour of duty in Singapore was completed, Mr. Hooks was transferred back to Charleston, South Carolina, since his former position in Savannah had been transferred to that new location. Accordingly, we held, under the circumstances of that case, that Mr. Hooks was entitled to reimbursement for real estate expenses for the sale of his home in Alaska under the statutory exception² to the general rule in 5 U.S.C. § 5724a(a)(4) (1988) that both old and new duty stations must be located in the United States or other specified locations.

The Corps states that the circumstances of this case differ from the situation in Hooks. The information provided by the Huntsville Personnel Office to Mr. Peak as to reimbursement of real estate expenses was predicated on his continued employment with the Huntsville Division. Instead of going through the Huntsville Personnel Office, Mr. Peak negotiated directly with the Corps district in Japan and their servicing personnel office regarding employee entitlements.

The Corps also states that, unlike Hooks, Army regulations follow an open-ended procedure as far as where Mr. Peak will be offered a return assignment. For example, a

²The statutory exception provides for reimbursement of real estate expenses to an employee transferred to a foreign duty station who is transferred back to a duty station in the United States other than the one from which he transferred overseas. Added Pub. L. No. 100-202, § 101(m) [Title VI, § 628(a)(1)], Dec. 22, 1987, 101 Stat. 1329-430.

position at White Sands remains a placement possibility since its regulatory requirement stresses placement in the same geographical area as the employee's former position. The Corps opines that it does not know where Mr. Peak will be assigned until he applies to return and available positions are evaluated. Thus, the Corps concludes that Mr. Peak sold his house without the same type of notification or assurances given Mr. Hooks.

Under the provisions of 5 U.S.C. § 5724a(a)(4)(A) (1988), and the implementing regulations, the Federal Travel Regulation, 41 C.F.R. § 302-6.1(a) (1993), and the Joint Travel Regulations, Vol. 2 (2 JTR), para. C14000-1-1, both the old and new duty stations must be located within the United States (the 50 states) or other named locations to entitle an employee to reimbursement of the expenses of selling or purchasing a residence.³ However, as noted above, section 5724a(a)(4) was amended in 1987 to allow reimbursement of real estate expenses to an employee transferred to a foreign duty station who is transferred back to a duty station in the United States other than the one from which he transferred overseas. 2 JTR, para. C14000-3b. Such reimbursement shall not be allowed for any real estate transaction that occurs "prior to official notification" that the employee's return to the United States would be to an official station other than the one from which he was transferred to the foreign post of duty. 2 JTR, para. C14000-3d.

We agree with the Corps that the circumstances of this case differ from our decision in Hooks. Mr. Peak was not given official notification that he would not be returning to the White Sands/Las Cruces area, nor is there an Army regulation that specifically prevents the employee from returning to his old duty station. In fact, the Corps reports that it is possible that Mr. Peak will be reassigned to his old duty station in White Sands.

We also note that Mr. Peak has designated Las Cruces as his home of record, and in a memorandum to his servicing Personnel Office at White Sands, prior to the sale of his residence, he stated that he understood that, under the general interpretation of the travel regulations, the government would not allow reimbursement of relocation expenses at his permanent place of residence (Las Cruces, New Mexico). Mr. Peak's real estate listing agreement, which is part of the record, indicates that it expired in March 1991, which date preceded the date of sale of the residence by approximately 5 months. Therefore, Mr. Peak could have withdrawn the listing without further obligation or expense. See, William E. Jackson, Jr., B-181321, Nov. 19, 1974.

Accordingly, the statutory exception which would permit reimbursement of real estate expenses is not applicable here, and Mr. Peak's request for reimbursement of real estate expenses is denied. Robert M. Hooks, B-249184, Mar. 5, 1993, 72 Comp. Gen. 130, distinguished.

³Donald E. Clay, B-242558, June 19, 1991, aff'd on reconsideration, B-242558.2, Dec. 18, 1991; Frederick J. Donnelly, B-237607, May 21, 1990.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel